IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1435 of 1991

with

FIRST APPEAL No 241 of 1992

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNITED INDIA INSURANCE CO.LTD.

Versus

CHANDULAL GOKALDAS MEHTA,DECD.THRO'SUNILBHAI C. MEHTA

Appearance:

1. First Appeal No. 1435 of 1991
   MR PV NANAVATI for the appellants.
   MR AJ PATEL for Respondent No. 1-5
   NOTICE NOT RECD BACK for Respondent No. 6-7
2. First Appeal No. 241 of 1992
   MR AJ PATEL for the appellants
   MR PV NANAVATI for Respondent No. 1

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and

MR.JUSTICE A.L.DAVE

Date of decision: 19/06/2003

ORAL JUDGEMENT

(Per : ACTING CHIEF JUSTICE MR.JN BHATT)

In both these appeals, common questions are involved and they arise out of common judgment an award. Upon joint request, they are being disposed of by this common judgment.

A claim petition came to be filed by the heirs and legal representatives, original-petitioners, appellants in First Appeal No.241 of 1992, inter alia, contending that they lost their bread-winner in a road accident which occurred on 4.1.88. The deceased was travelling on a scooter bearing No.GUJ-982 on National Highway No.8 near Dabhan and was driving his scooter in slow speed on the correct side. At that time, original opponent No.1, Shanabhai Prajapati, driving Matador-Tempo bearing No.GRW-2, came with excessive speed and dashed with the scooter on the wrong side, as a result of which deceased Yogesh Chandulal Mehta, sustained serious injuries and succumbed to the same during the course of treatment. Original opponent No.1, Shanabhai was the driver, original opponent No.2, Ishwarbhai Prajapati was the owner of the vehicle and original No.3, United India Insurance Company was the insurer of the offending Matador-Tempo.

The deceased was doing the business of engraving and was dealing with electrical goods at Ahmedabad. He was earning Rs.4000/- per month as per the version of the applicants. Original applicant No.1 is the father of the deceased, ori. applicant No.2 is the mother and original applicant No.3 is the widow and original applicant Nos.4 & 5 are the minor children of the deceased. The claim petition came to be filed before the Motor Accident Claims Tribunal, (Aux), Kheda at Nadiad being MACP No.241 of 1988 claiming an amount of Rs.6 lacs by way of compensation for premature and untimely accidental demise of the bread-winner of the family, Yogeshbhai, who was in the prime of his youth, alleging that original opponent No.1, driver of the Matador-Tempo was rash and negligent and responsible for the accident.

Original opponent Nos.1 & 2 did not file written statement, whereas, original opponent No.3, insurer, contested the claim, inter alia, contending that the liability of the insurer is limited and restricted to only an amount of Rs.1,50,000/- as per the provisions of

insurance policy since the policy is an Act policy. The Tribunal upon consideration of the facts and circumstances and evaluation of the evidence led by the parties, passed the impugned award, whereby, the original applicants, heirs and legal representatives of the deceased came to be awarded an amount of Rs.2,12,000.00 by way of compensation with interest at the rate of 12 per cent per annum from the date of application till realisation. The Tribunal also directed the award to be executed against all the three opponents rejecting the plea of limited liability of the Insurance Company. Original opponent No.3 has filed First Appeal No.1435 of 1991 raising the plea of limited liability and questioning the award, whereas, original applicants have filed First Appeal No.241 of 1992 for enhancement of the amount of compensation. The parties are hereinafter referred to as they were in the original proceedings for the sake of convenience.

Two contentions are raised in this group of two appeals against the common judgment and award.

1. On behalf of the Insurance Company, it has been contended that the liability of the Insurance Company was limited to the extent of Rs.1,50,000/- as the insurance covered was under an Act policy.

2. On behalf of the original-applicants, it has been contended that the amount of compensation awarded by the Tribunal is grossly inadequate and highly unreasonable requiring upward modification.

We have heard the learned advocates appearing for the parties. We have, also, evaluated the evidence and considered the relevant proposition of law and the latest case law.

CONTENTION NO.1 WITH REGARD TO LIABILITY:

In our opinion, after having seen the copy of the policy and examining the provisions of section 95(2) of the then applicable Motor Vehicles Act, 1939, the policy produced at Ex.25 and proved in the evidence of the Divisional Manager of the Insurance Company, we are of the clear opinion that the policy is an Act policy, and at the relevant time, in absence of any additional liability or extra premium, the statutory liability of the insurer was limited and restricted to an amount of Rs.1,50,000/-. The Tribunal has, unfortunately, failed to appreciate the correct factual profile from the policy and the resultant

statutorily restricted liability of the insurer. It has been, now, very well propounded and expounded by a Constitution Bench decision of the Hon'ble Apex Court in the case of New India Assurance Co. Ltd. v. C.M.Jaya, (2002) 2 SCC 278 that the liability of the insurer, before amendment in 1988, was limited as provided in section 95 of the Act. No doubt, it was open to make wider coverage by making payment of additional or higher premium. So is not the case before us. However, it is certain that in absence of any such plea or clause in the insurance policy, the liability of the insurer cannot be said to be unlimited as held by the Tribunal even in respect of the third party. But it is restricted or limited to the extent of Rs.1,50,000/- in view of the policy being an Act policy. Therefore, the first contention advanced by the learned advocate Mr.Nanavati on behalf of the appellant in First Appeal No.1435 of 1991 is quite justified and is required to be accepted. We are, therefore, convinced that the Tribunal's finding and ultimate conclusion that the insurance Company is fully liable is hereby quashed and set aside and is substituted by the liability as per the Act policy to the extent of Rs.1,50,000/-. In other words, insofar as original original opponent No.3, insurer of matador-Tempo is concerned, the liability for payment of compensation will be restricted to an amount of Rs.1,50,000/- over and above the proportionate cost and interest thereon. We, therefore, decide point No.1 accordingly.

CONTENTION NO.2 WITH REGARD TO QUANTIFICATION OF DAMAGES:

It will lead us to the consideration and appreciation of evidence with regard to quantification of damages. It has been contended that assessment of compensation under the heads made by the Tribunal is quite inadequate and requires to be upwardly revised in view of the factual profile emerging from the record of the present case and the settled proposition of law. After having given our anxious thoughts and consideration to the facts and circumstances, we are of the clear opinion that the second contention also requires serious consideration.

We have, in course of the submissions before us, found that the deceased was in the prime of his youth. He was an earning member of the family and as such is the main breadwinner. The deceased was doing the business of engraving and selling electrical parts. The Tribunal has found that the income of the deceased, from the evidence of the record, could be assessed at Rs.18,000/- per annum since the deceased was paying income tax and was filing regular returns. The Tribunal has deducted Rs.6,000/-

towards expenses of the deceased and has considered the datum figure at Rs.12,000/- per annum and has applied the multiplier of 16. The Tribunal has also awarded Rs.10,000/- under the head of loss of expectancy of life, Rs.5,000/- under the head of after-death ceremonies and Rs.5,000 for pain and suffering. In all, the Tribunal has awarded an amount of Rs.2,12,000/-.

In our opinion, the Tribunal has, again, committed serious error in not considering the prospective earnings of the deceased. It is a settled proposition of law that the Tribunal is obliged to consider, in such case, the prevalent income at the time of unfortunate road mishap and the prospective earnings. Therefore, considering the settled proposition of law with regard to assessment of amount of compensation, in such cases, we are of the opinion that the Tribunal has committed serious error in considering the income of the deceased at Rs.18,000/ per annum. In our opinion, in any case, considering the prospective earnings and the resultant principle to be applied considering the settled proposition of law in host of decisions, an amount of Rs.27,000/- can, safely, be assessed on the annual utility of the deceased to the common family fund. Even if one-third of the amount is deducted out of the said amount, the annual utility of the deceased to the common family, including himself, dependency would work out to Rs.18,000/. We find that the multiplier adopted by the Tribunal at 16 cannot be said to be unjust and unjustified. An amount of Rs.18,000/- multiplied by 16 would come to Rs.2,88,000/ plus the conventional amount of expectancy of life of Rs.10,000 and Rs.5,000/- towards after death ceremony. In all, the original applicants, appellants in First Appeal No.241 of 1992 would be entitled to an amount of Rs.3,03,000/- whereas the Tribunal has awarded an amount of Rs.2,12,000/-. Therefore, First Appeal No.241 of 1992 is, also, required to be, partly, allowed modifying the award qua the quantification of damages.

In the result, we pass the following final order in both the appeals.

First Appeal No.1435 of 1991 filed by the insurer is allowed. The liability of the insurance company for the payment of compensation, out of total amount, shall be limited and restricted only to the extent of Rs.1,50,000/-.

First Appeal No.241 of 1992 is partly allowed and the original opponents Nos.1 and 2, driver and owner of the vehicle would be liable for the payment of compensation

as awarded by us hereinbefore. In other words, original opponent Nos.1 & 2 shall be jointly and severally liable for the payment of compensation, whereas the liability of the Insurance Company, original opponent No.3 would be limited to the extent of an amount of Rs.1,50,000/- with proportionate cost and interest thereon. Both the appeals shall accordingly stand allowed with no order as to costs.

The additional amount awarded to the claimants by us, in this appeal, shall be apportioned between the original applicants in the same proportion and ratio approved and awarded by the Tribunal and 90 per cent of the amount coming to the shares of each original claimants, except minors, shall be deposited in any Government security or nationalised banks or in any security of the Government undertaking or any other better security as per the choice of the claimants and to be approved by the Tribunal. The interest which shall accrue therefrom shall be paid to the beneficiary concerned, whereas, the amount coming to the shares of the minors shall be fully deposited in the same proportion and the interest which shall accrue therefrom periodically will be paid to the mother, widow of the deceased, for the welfare and upkeepment of the minors. There shall not be any charge, encumbrance or any lien on the amount that may be deposited in the Bank or any other security and such an endorsement shall be made on the top of each security receipt with corresponding entry in the ledger concerned of the issuing competent authority.

It has been contended by the learned advocate Mr.Nanavati appearing for the insurance Company that the Insurance Company has deposited the full amount as per the award of the Tribunal and therefore, in view of our direction about the limited liability to the extent of Rs.1,50,000/- with proportionate cost and interest thereon, the excess amount deposited has to be refunded to the Insurance Company. The Tribunal upon verification is directed to return the excess amount to the Insurance Company in the light of the limited liability and the findings recorded by us.

(J.N.Bhatt, Acting CJ)

(A.L.Dave, J.)
(vjn)